

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## **Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions**

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### **Please read this agreement prior to viewing the Decision:**

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

# FILE COPY

STATE OF WISCONSIN  
REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

NICK SANTORO,  
aka BEN N. SANTORO  
RESPONDENT.

FINAL DECISION  
AND ORDER  
LS9501193REB

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

## ORDER

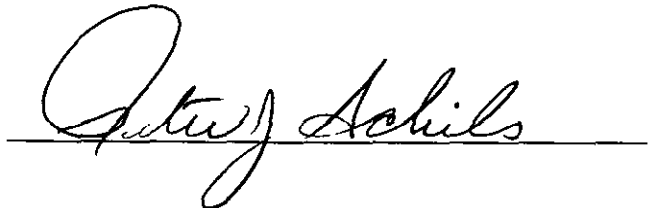
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

The rights of a party aggrieved by this Decision to petition the board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 25TH day of MAY, 1995.



STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

NICK SANTORO,  
aka BEN N. SANTORO

LS9501193REB

Respondent

---

PROPOSED DECISION

---

The parties to this matter for the purposes of sec. 227.53, Stats., are:

Nick Santoro  
c/o Homestead Realty, Inc.  
1475 Carriage Lane  
New Berlin, WI 53151

State of Wisconsin Real Estate Board  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

State of Wisconsin Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

A hearing in this matter was conducted on March 21, 1995, at 1400 East Washington Avenue, Madison, Wisconsin. Complainant appeared by Attorney Charles J. Howden. Respondent Nick Santoro did not appear, nor did anyone appear to represent him.

Based upon the entire record in this matter, the administrative law judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

### FINDINGS OF FACT

1. Nick Santoro, also known as Ben N. Santoro (respondent), c/o Homestead Realty, Inc. 1475 Carriage Lane, New Berlin, Wisconsin 53151, was granted a license to practice as a real estate broker by license # 39079, granted on April 12, 1993. The license expired on January 1, 1995, and has not to date been renewed.

2. On or about May 16, 1993, respondent was arrested at 5900 West National Avenue, Milwaukee, Wisconsin, behind the Country Rock Cafe. The police incident report prepared relating to the arrest states that when approached by police officers respondent appeared to throw something under a nearby truck. A .22 caliber pistol was subsequently recovered from under the truck. The incident report also relates that respondent made contradictory statements as to his ownership interest in the Country Rock Cafe, and that when searched, respondent was found to have a canister of Mace on his person.

3. On or about May 17, 1993, in the Circuit Court for Milwaukee County, State of Wisconsin, in Case number 2-304173, respondent was criminally charged with being unlawfully armed with a concealed and dangerous weapon, contrary to sec. 941.23, Stats., a Class A misdemeanor.

4. On or about January 3, 1994, upon his plea of no contest, respondent was convicted of carrying a concealed weapon in violation of sec. 941.23, Stats., a Class A misdemeanor.

5. Conviction of the crime of carrying a concealed weapon, in violation of sec. 941.23, Stats., is a conviction the circumstances of which substantially relate to the circumstances of the practice of a real estate broker.

### CONCLUSIONS OF LAW

1. The real Estate Board has jurisdiction in this matter pursuant to sec. 452.14, Stats.

2. The circumstances of a conviction for carrying a concealed weapon in violation of sec. 941.23, Stats. is substantially related to the circumstances of the practice of a real estate broker, within the meaning of sec. 111.335(1)(c)1., Stats.

3. In having been convicted of a crime the circumstances of which substantially relate to the practice of a real estate broker, respondent has violated sec. RL 24.17(2), Code. Pursuant to sec. RL 24.01(3), Code, respondent has thereby violated sec. 452.14(3)(i), Stats.

### ORDER

NOW, THEREFORE, IT IS ORDERED that the right to renew the license of Nick Santoro, also known as Ben N. Santoro, be, and hereby is, revoked effective on the date of the final decision and order of the Real Estate Board adopting the terms of this Proposed Decision.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats., the costs of this proceeding are assessed against the respondent.

### OPINION

At a prehearing conducted in the matter on March 1, Mr. Santoro stated his intent to surrender his license. He was notified at that time that in order to surrender his license, it would be necessary to execute a stipulation, which would enable the board to make findings of fact, conclusions of law, and to formally order acceptance of the voluntary surrender.

When the proffered stipulation had not been returned to the division of enforcement by the day prior to the day of the hearing, the ALJ attempted to contact Mr. Santoro by phone. The parties were finally able to conduct a conference on the morning of the hearing, at which time it became apparent that Mr. Santoro did not fully understand that his earlier letter offering the surrender of his license was insufficient to bring the matter to a conclusion. The ALJ indicated at that time that Mr. Santoro would be given his choice of three alternatives: First, to permit the hearing to go forward as scheduled without his presence; second, to delay the start of the hearing until early afternoon to permit his attendance; or third, to execute and transmit the stipulation by FAX to permit the board to accept the voluntary surrender of his license. After some discussion, Mr. Santoro opted for permitting the hearing to go forward without his attendance. Consequently, because Mr. Santoro neither filed an Answer to the Complaint nor appeared at hearing, complainant's motion for default under sec. RL 2.14, Code was granted, and Mr. Howden was permitted to submit *prima facie* evidence of the violation alleged.

Documentation admitted and testimony received at hearing adequately establish proof of the Findings of Fact set forth herein, and there are thus only two questions to be considered in this matter. First: does Mr. Santoro's conviction for carrying a concealed weapon substantially relate to the circumstances of the practice of a real estate broker; and second, if so, what discipline, if any, is appropriate.

On the issue of whether the conviction is substantially related, the Wisconsin Supreme Court recently defined the criteria for establishing substantial relationship in *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 (1987). Defendant in that case had been convicted of homicide by reckless conduct and of neglect of nursing home residents. The court

found that in his capacity as nursing home administrator, the defendant had failed to provide for necessary staffing and supplies to avoid patient harm. At the time of conviction, defendant was employed by the County of Milwaukee as a Crisis Intervention Specialist, and he was discharged from employment as a result of the conviction. The Supreme Court overturned the decisions of the Milwaukee Circuit Court and the Court of Appeals by finding that the circumstances of the conviction were substantially related to the circumstances of employment as a crisis intervention specialist.

Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details . . . . It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *139 Wis. 2d at 824.*

Persons engaged in real estate transactions with brokers have the right to expect those brokers to conduct themselves in a manner so as to elicit the client's trust in and reliance upon the broker's integrity and reliability. Conviction for the crime of carrying a concealed weapon under sec. 941.23, Stats., requires a finding that a dangerous weapon be on the defendant's person or within reach; that the defendant be aware of the weapon's presence; and that the weapon be hidden. It is not necessary to speculate as to why respondent was carrying both a .22 caliber pistol and a canister of Mace, or as to the uses to which these weapons were intended to be put, to conclude that one who would carry such weapons does not demonstrate character traits that would promote the public's trust in his integrity and reliability.

Moreover, as was pointed out in the testimony at hearing, a real estate broker is licensed to engage in the limited practice of law, and must therefore demonstrate a respect for the law and its requirements. Both the act of carrying a concealed weapon and Mr. Santoro's evasive conduct at the time he was arrested, as set forth in the police incident report admitted as Exhibit #2, are inconsistent with character traits demonstrating such respect for the law.

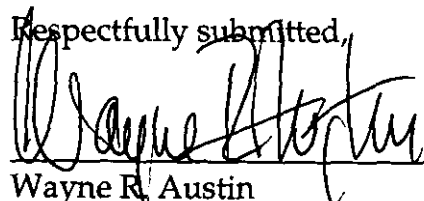
When a broker engages in criminal activity evidencing character traits inconsistent with those expected of a broker, it must be concluded that such activity and the criminal conviction arising therefrom are in fact substantially related to the circumstances of the practice of a real estate broker. If so, then the conclusion lies that respondent has violated sec. 24.17(1), Code, which establishes as a violation of the real estate law a violation of a law or conviction of a crime the circumstances of which substantially relate to the practice of a real estate broker; and that under sec. 24.01(3), Code, respondent has therefore also violated sec. 452.14(3)(i), Stats.

It is well established that the purposes of licensee discipline in Wisconsin are to protect the public, to deter other licensees from engaging in similar conduct, and to promote

the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969). It is unfortunate that Mr. Santoro chose not to attend the hearing in this matter and to avail himself of the opportunity to offer whatever mitigating evidence there may be bearing on the circumstances of his conviction. For while the conviction is substantially related to the practice of a real estate broker, the relevant finding involves a single misdemeanor conviction -- which is probably not a finding which would normally support an order revoking the license. The fact that Mr. Santoro chose not to respond to the allegations of the Complaint in any manner, however, along with his stated disinterest in maintaining his license, leads to the conclusion that revocation of his right to renew his license is the appropriate discipline to be imposed.

Dated this 17th day of April, 1995.

Respectfully submitted,



---

Wayne R. Austin  
Administrative Law Judge

WRA:9504135.doc

---

---

## NOTICE OF APPEAL INFORMATION

---

---

**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN REAL ESTATE BOARD.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

**The Date of Mailing this Decision is:**

MAY 26, 1995.

### **1. REHEARING**

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### **2. JUDICIAL REVIEW.**

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)



3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter. Unless otherwise noted, all times commence at the start of the first five minute period following actual start of the activity, and terminate at the start of the first five minute period prior to the actual end of the activity.

ADMINISTRATIVE LAW JUDGE EXPENSE -- WAYNE R. AUSTIN

DATE &  
TIME SPENT

ACTIVITY

2/14/95 10 minutes	Prepare Notice of Prehearing Conference
3/1/95 10 minutes	Conduct prehearing conference
3/1/95 10 minutes	Prepare prehearing memorandum
3/21/95 25 minutes	Conduct hearing
4/17/95 two hours	Prepare Proposed Decision

Total Time Spent.....2 hours, 55 minutes

Total administrative law judge expense for Wayne R. Austin:  
2 hours, 55 minute @ \$44.55, salary and benefits:.....\$129.94

REPORTER EXPENSE -- MAGNEScript

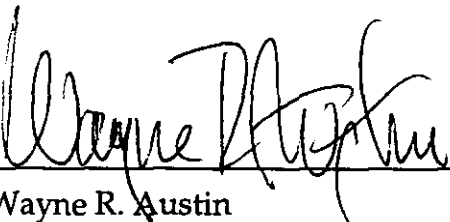
DATE &  
TIME SPENT

ACTIVITY

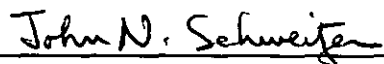
3/21/95 (Attendance only)	Record hearing
------------------------------	----------------

Total billing from Magne-Script reporting  
service (Invoice #8746, dated 3/21/95):.....\$55.00

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: \$184.94

  
\_\_\_\_\_  
Wayne R. Austin  
Administrative Law Judge

Sworn to and subscribed before me this 7<sup>th</sup> day of June  
1995.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

NICK SANTORO, A/K/A BEN  
N. SANTORO,  
RESPONDENT

AFFIDAVIT IN SUPPORT  
OF MOTION FOR COSTS  
LS 9501193 REB

STATE OF WISCONSIN     )  
                                  ) ss.  
COUNTY OF DANE .     )

Charles J. Howden, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the State of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;
2. That in the course of those duties he worked as a prosecutor in the above-captioned matter; and
3. That set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of business:

**INVESTIGATOR EXPENSE**

Various contacts with Milwaukee Police Department and Milwaukee County Court System.  
Total time spent 2.5 hours.

**PROSECUTING ATTORNEY EXPENSE**

Various contacts with Investigator, review of file, drafting of proposed Stipulation, drafting of correspondence, drafting of Notice of Hearing and Complaint, preparation of Hearing, and drafting of Affidavit of Costs.  
Total time spent 4.5 hours.

**SUMMARY OF HOURS**

TOTAL INVESTIGATOR TIME 2.5 hours x \$20.00 per hour equals:	\$50.00
TOTAL ATTORNEYS TIME 4.5 hours x \$41.00 per hour equals:	\$184.50
<b>TOTAL COST TO THE DIVISION OF ENFORCEMENT:</b>	<b>\$234.50</b>

Charles J. Howden  
Charles J. Howden

Subscribed and sworn to before me  
this 8<sup>th</sup> day of June, 1995.

James E. Poterzki  
Notary Public  
My Commission is Permanent.

CJH:dab  
T-HLG1592